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☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 170

Complete if Known

Application Number	09/823,877
Filing Date	3/29/2001
First Named Inventor	Scott Wolinsky
Examiner Name	Scott E. Jones
Art Unit	3713
Attorney Docket No.	AP IT001

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit Account Number: 50-3196
Deposit Account Name: Anatoly S. Weiser

The Director is authorized to: (check all that apply)

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description	Fee Paid
1001 790	2001 395	Utility filing fee	
1002 350	2002 175	Design filing fee	
1003 550	2003 275	Plant filing fee	
1004 790	2004 395	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1) (\$)			

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims	-20** =	X	
Independent Claims	-3** =	X	
Multiple Dependent			

Large Entity Fee Code (\$)	Small Entity Fee Code (\$)	Fee Description
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 88	2204 44	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2) (\$)		

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)

3. ADDITIONAL FEES

Large Entity Small Entity

Fee Code (\$)	Fee Code (\$)	Fee Description	Fee Paid
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 430	2252 215	Extension for reply within second month	
1253 980	2253 490	Extension for reply within third month	
1254 1,530	2254 765	Extension for reply within fourth month	
1255 2,080	2255 1,040	Extension for reply within fifth month	
1401 340	2401 170	Notice of Appeal	
1402 340	2402 170	Filing a brief in support of an appeal	170
1403 300	2403 150	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive - unavoidable	
1453 1,370	2453 685	Petition to revive - unintentional	
1501 1,370	2501 685	Utility issue fee (or reissue)	
1502 490	2502 245	Design issue fee	
1503 660	2503 330	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17(q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR 1.129(b))	
1801 790	2801 395	Request for Continued Examination (RCE)	
1802 900	1802 900	Request for expedited examination of a design application	

Other fee (specify)

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 170

SUBMITTED BY

(Complete if applicable)

Name (Print/Type)	Anatoly S. Weiser	Registration No. (Attorney/Agent)	43,229	Telephone	858 720-9431
Signature	<i>Anatoly S. Weiser</i>	Date	10/20/2004		

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AP IT001 UTL
Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Scott Wolinsky

Serial No.: 09/823,877

Filed: 29 March 2001

For: METHOD AND APPARATUS FOR
IDENTIFYING GAME PLAYERS
AND GAME MOVES

)
) **Group Art Unit:** 3713

)
) **Examiner:** Scott E. Jones

)
) **Attorney File No.:** AP IT001

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APPEAL BRIEF TO THE BOARD OF PATENT APPEALS AND INTERFERENCES

Sir:

This is an Appeal from rejection mailed on 21 April 2004 in the above-referenced patent application.

10/26/2004 YPOLITE1 00000023 503196 09823877

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October 20, 2004
Date of Deposit

Anatoly S. Weiser

Name of Person Mailing Paper

Signature of Person Mailing Paper

I
REAL PARTY IN INTEREST

In this Appeal, the real party in interest is Interactive Telegames, LLC, a New York limited liability company, having a place of business at 75 Montebello Road, Suffern, NY 10901.

II
RELATED APPEALS AND INTERFERENCES

Appellant and the undersigned legal representative do not know of any other appeal, interference, or judicial proceeding that is related to, directly affects, is directly affected by, or has a bearing on the decision of the Board of Patent Appeals and Interferences (the “Board” or the “Board of Appeals”) in this Appeal.

III
STATUS OF CLAIMS

The status of claims in the instant application is as follows:

Claims 1-40 and 60-67 – Rejected and pending.

Claims 41-59 – Canceled.

Applicant-Appellant appeals from rejection of claims 1-40 and 60-67.

IV

STATUS OF AMENDMENTS

No amendments have been filed subsequent to the rejection of claims in the Office Action mailed on April 21, 2004.

V

SUMMARY OF CLAIMED SUBJECT MATTER

Claim 1

Claim 1 is directed to a method used in playing games between players at two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16.¹ Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42. The telephone number of the first communication terminal is stored in a first memory location, which is found in the first terminal, while the telephone number of the second communication terminal is stored in a third memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 810.

The telephone number of the second terminal is dialed at the first terminal, and a communication link is established between the two terminals. Original Application, page 8, line 43 through page 9, line 3; Published Application, par. 42. The dialed number is stored in a second memory location, which is found in the first terminal. Original Application, page 8, lines 28-31; Published Application, par. 41.

¹ For ease of reference, we provide parallel citations to (1) the pages and line numbers of the Application as filed ("Original Application"), and (2) numbered paragraphs of the Application as published ("Published Application").

The number of the first communication terminal is determined at the second communication terminal. Original Application, page 9, lines 3-6; Published Application, par. 42. The number of the first terminal is stored in a fourth memory location, which is found in the second terminal.² *Id.*; Fig. 8A, step 825.

Both telephone numbers are displayed at each communication terminal. Original Application, page 8, lines 31-35; Published Application, par. 41; Fig. 8A, step 835.

Claim 10

Claim 10 is directed to a method used in playing games between players at two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42. The telephone number of the first communication terminal is stored in a first memory location, which is found in the first terminal, while the telephone number of the second communication terminal is stored in a third memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 810.

A communication link is established between the two terminals. Original Application, page 8, line 43 through page 9, line 3; Published Application, par. 42.

The number of the first communication terminal is received at the second communication terminal. Original Application, page 9, lines 3-6; Published Application, par. 42. The number of the first terminal is stored in a fourth memory location, which is found in the second terminal. *Id.*; Fig.

² This description of the claimed subject matter generally follows the nomenclature of the claims. Different designations can be used in the specification. In the present case, for example, the specification states that the number of the “different terminal” (*i.e.*, of the terminal that initiated the communication) is stored in the “third” memory location of “the terminal” (*i.e.*, of the terminal that received the incoming communication).

8A, step 825. The number of the second terminal is stored in a second memory location, which is found in the first terminal. Original Application, page 8, lines 28-31; Published Application, par. 41.

Game mode is activated at each terminal. The Abstract.

Both telephone numbers are displayed at each communication terminal. Original Application, page 8, lines 31-35; Published Application, par. 41; Fig. 8A, step 835.

Claim 19

Apparatus of claim 19 includes two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42; Fig. 9, reference numerals 950, 955, and 960. First and second memory locations, which are found in the first terminal, are capable of storing the telephone numbers of the first and second communication terminals, respectively. Original Application, page 8, lines 28-31; Published Application, par. 41. Third and fourth memory locations, which are found in the second terminal, are capable of storing the telephone numbers of the second and first communication terminals, respectively. *Id.*

The apparatus further includes the following elements:

means for dialing at the first terminal the telephone number of the second terminal, such as a dialer circuit 988 of Fig. 9;

means for storing the dialed telephone number in the second memory location, such as CPU 945 of Fig. 9 (see Original Application at page 9, lines 41-43, and Published Application, par.44);

means for establishing a communication link between the two terminals, such as the dialer circuit 988 and link 990 of Fig. 9 (see Original Application at page 9, lines 44-46, and Published Application, par. 44);

means for storing the telephone number of the first terminal in the fourth memory location, such as path 994 and the CPU 945 of Fig. 9 (see Original Application at page 9, line 46 through page 10, line 3, and Published Application, par 44);

means for activating game mode, such as circuit 935 and CPU 945 of Fig. 9 (see Original Application, page 10, lines 3-7); and

means for displaying at each terminal the telephone number of the first and second terminals, such as displays 905 and 910 of Fig. 9.

Claim 28

Apparatus of claim 28 includes two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42; Fig. 9, reference numerals 950, 955, and 960. First and second memory locations, which are found in the first terminal, are capable of storing the telephone numbers of the first and second communication terminals, respectively. Original Application, page 8, lines 28-31; Published Application, par. 41. Third and fourth memory locations, which are found in the second terminal, are capable of storing the telephone numbers of the second and first communication terminals, respectively. *Id.*

The apparatus further includes the following elements:

means for receiving at the second communication terminal the telephone number of the first communication terminal, such as the link 990 of Fig. 9;

means for storing the received telephone number in the fourth memory location, such as path 994 and CPU 945 of Fig. 9 (see Original Application at page 9, line 46 through page 10, line 3, and Published Application, par. 44);

means for establishing a communication link between the two terminals, such as the dialer circuit 988 and link 990 of Fig. 9 (see Original Application at page 9, lines 44-46, and Published Application, par. 44);

means for storing the telephone number of the second terminal in the second memory location, such as path 965 and the CPU 945 of Fig. 9 (see Original Application at page 9, lines 41-43, and Published Application, par. 44);

means for activating game mode, such as circuit 935 and the CPU 945 of Fig. 9 (see Original Application, page 10, lines 3-7, and Published Application, par. 44);

means for displaying at each terminal the telephone number of the first and second terminals, such as displays 905 and 910 of Fig. 9.

Claim 37

Claim 37 is directed to a method used in playing games between players at two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42. The telephone number of the first communication terminal is stored in a first memory location, which is

found in the first terminal, while the telephone number of the second communication terminal is stored in a third memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 810.

The number of the first communication terminal is received at the second communication terminal. Original Application, page 9, lines 3-6; Published Application, par. 42. The number of the first terminal is stored in a fourth memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 825. The number of the second terminal is stored in a second memory location, which is found in the first terminal. Original Application, page 8, lines 28-31; Published Application, par. 41.

Both telephone numbers are displayed at each communication terminal. Original Application, page 8, lines 31-35; Published Application, par. 41; Fig. 8A, step 835.

Claim 38

Apparatus of claim 38 includes two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42; Fig. 9, reference numerals 950, 955, and 960. First and second memory locations, which are found in the first terminal, are capable of storing the telephone numbers of the first and second communication terminals, respectively. Original Application, page 8, lines 28-31; Published Application, par. 41. Third and fourth memory locations, which are found in the second terminal, are capable of storing the telephone numbers of the second and first communication terminals, respectively. *Id.*

The apparatus further includes the following elements:

means for receiving at the second communication terminal the telephone number of the first communication terminal, such as the link 990 of Fig. 9;

means for storing the received telephone number in the fourth memory location, such as path 994 and CPU 945 of Fig. 9 (see Original Application at page 9, line 46 through page 10, line 3, and Published Application, par. 44);

means for storing the telephone number of the second terminal in the second memory location, such as path 965 and the CPU 945 of Fig. 9 (see Original Application at page 9, lines 41-43, and Published Application, par. 44); and

means for displaying at each terminal the telephone number of the first and second terminals, such as displays 905 and 910 of Fig. 9.

Claim 39

Claim 39 is directed to a method used in playing games between players at two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42. The telephone number of the first communication terminal is stored in a first memory location, which is found in the first terminal, while the telephone number of the second communication terminal is stored in a third memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 810.

The telephone number of the second terminal is dialed at the first terminal. Original Application, page 8, line 43 through page 9, line 3; Published Application, par. 42. The dialed number is stored in a second memory location, which is found in the first terminal. Original Application, page 8, lines 28-31; Published Application, par. 41.

The number of the first terminal is stored in a fourth memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 825.

Both telephone numbers are displayed at each communication terminal. Original Application, page 8, lines 31-35; Published Application, par. 41; Fig. 8A, step 835.

Claim 40

Apparatus of claim 40 includes two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42; Fig. 9, reference numerals 950, 955, and 960. First and second memory locations, which are found in the first terminal, are capable of storing the telephone numbers of the first and second communication terminals, respectively. Original Application, page 8, lines 28-31; Published Application, par. 41. Third and fourth memory locations, which are found in the second terminal, are capable of storing the telephone numbers of the second and first communication terminals, respectively. *Id.*

The apparatus further includes the following elements:

means for dialing at the first terminal the telephone number of the second terminal, such as a dialer circuit 988 of Fig. 9;

means for storing the dialed telephone number in the second memory location, such as path 965 and CPU 945 of Fig. 9 (see Original Application at page 9, lines 41-43, and Published Application, par.44);

means for storing the telephone number of the first terminal in the fourth memory location, such as path 994 and the CPU 945 of Fig. 9 (see Original Application at page 9, line 46 through page 10, line 3, and Published Application, par 44); and

means for displaying at each terminal the telephone number of the first and second terminals, such as displays 905 and 910 of Fig. 9.

Claim 60

Claim 60 is directed to a method used in playing games between players at two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42. The telephone number of the first communication terminal is stored in a first memory location, which is found in the first terminal, while the telephone number of the second communication terminal is stored in a third memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 810.

The telephone number of the second terminal is stored in a second memory location, which is found in the first terminal. Original Application, page 8, lines 28-31; Published Application, par. 41. The telephone number of the second terminal is dialed at the first terminal to place a telephone call to the second terminal. Original Application, page 8, line 43 through page 9, line 3; Published Application, par. 42. The telephone call is received at the second terminal, and a communication link is established between the two terminals. Original Application, page 8, line 43 through page 9, line 1; Published Application, par. 42.

Caller ID signals are received at the second terminal, and the telephone number of the first terminal is obtained from the received caller ID signals. Original Application, page 9, lines 3-6; Published Application, par. 42. The number of the first terminal obtained from the caller ID signals is then stored in a fourth memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 825.

Both telephone numbers are retrieved from the memory locations used for their storage at each terminal, and concurrently displayed at each terminal. Original Application, page 10, lines 7-9; Published Application, par. 44; Fig. 8A, step 835; Fig 4 (simultaneous display of PLAYER 1 and PLAYER 2 telephone numbers on each telephone).

Claim 63

Claim 63 is directed to a method used in playing games between players at two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42. The telephone number of the first communication terminal is stored in a first memory location, which is found in the first terminal, while the telephone number of the second communication terminal is stored in a third memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 810.

The telephone number of the second terminal is also stored in a second memory location, which is found in the first terminal. Original Application, page 8, lines 28-31; Published Application, par. 41. The telephone number of the second terminal is dialed at the first terminal to place a telephone call to the second terminal. Original Application, page 8, line 43 through page 9, line 3; Published Application, par. 42. The telephone call is received at the second terminal, and a communication link is established between the two terminals. Original Application, page 8, line 43 through page 9, line 1; Published Application, par. 42.

The number of the first terminal is stored in a fourth memory location, which is found in the second terminal. *Id.*; Fig. 8A, step 825.

Both telephone numbers are retrieved from the memory locations used for their storage at each terminal, and concurrently displayed at each terminal. Original Application, page 10, lines 7-9; Published Application, par. 44; Fig. 8A, step 835.

For a particular game to be played between players at the two communication terminals, the method of claim 63 also determines which of the players at the two terminals is authorized to make the first move. Original Application, page 9, lines 20-23; Published Application, par. 43.

Claim 65

Apparatus of claim 65 includes two communication terminals capable of being connected by telephone. Original Application, page 4, lines 39-43; Published Application, par. 16. Each of the two terminals includes at least two memory locations. Original Application, page 8, lines 27-40; Published Application, pars. 41 and 42; Fig. 9, reference numerals 950 and 955. First and second memory locations, which are found in the first terminal, are capable of storing the telephone numbers of the first and second communication terminals, respectively. Original Application, page 8, lines 28-31; Published Application, par. 41. Third and fourth memory locations, which are found in the second terminal, are capable of storing the telephone numbers of the second and first communication terminals, respectively. *Id.*

In addition to the memory locations, the first terminal includes a dialer circuit capable of dialing the telephone number of the second terminal to establish a communications link between the two terminals. Fig. 9, element 988; Original Application, page 9, lines 44-46; Published Application, par. 44. The second terminal includes a caller ID circuit, which determines the number of the first terminal for storage in the fourth memory location. Fig. 9, element 992; Original Application, page 9, line 46 through page 10, line 3.

Each of the terminals further includes a display used for displaying both telephone numbers at the same time. Fig. 4 (simultaneous display of PLAYER 1 and PLAYER 2 telephone numbers on each telephone); Fig. 9, elements 905 and 910; Original Application, page 10, lines 7-9; Published Application, par. 44; Fig. 8A, step 835. In the apparatus of claim 65, the communication terminals can enter a game mode for playing a game between a first player at the first terminal and a second player at the second terminal. The Abstract.

VI **CONCISE STATEMENT OF THE GROUNDS OF REJECTION**

1. Claims 1, 7-10, 16-19, 25-28, and 34-40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Perlman, U.S. Patent Number 5,558,339 (“Perlman”).
2. Claims 2-6, 11-15, 20-24, 29-33, and 63-64 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Perlman in view of Teshima *et al.*, U.S. Patent Number 5,273,288 (“Teshima”), and in further view of Golad, U.S. Patent Number 6,231,441 (“Golad”).
3. Claims 60-62 and 65-67 stand rejected under obviousness-type double patenting doctrine as being unpatentable over claims 1-29 of U.S. Patent Number 6,682,427 (“Wolinsky ‘427” hereinafter).

VII **ARGUMENT**

A. Rejection of Claims 1, 7-10, 16-19, 25-28, and 34-40 As Being Unpatentable Over Perlman

Claims 1, 10, 19, 28, 37-40

In rejecting Claims 1, 7-10, 16-19, 25-28, and 34-40 as being unpatentable over Perlman (U.S. Patent No. 5,558,339), the Office Action mailed on April 21, 2004 (the “Office Action”) acknowledges that in Perlman,

due to privacy concerns, a player’s phone number is not “explicitly” shown to the opposing player. Rather a screen name or handle, and identification code is sent and displayed by both computers. Therefore, . . . the screen name, handle, and/or identification code are equivalent to a player’s telephone number because each are used to identify a particular player.

Office Action, page 3. The Office Action then apparently states that it would have been obvious to modify Perlman’s apparatus to use telephone numbers to identify game players.³ The Office Action concludes that one would be motivated to perform this modification “because of important privacy concerns.” *Id.*

As quoted above, the Office Action expressly acknowledges that privacy concerns prevent Perlman from displaying player telephone numbers. Therefore, the very same privacy concerns cannot be cited as the purported motivation to modify Perlman’s system so that it would display the very same telephone numbers. Perlman’s privacy concerns cannot logically provide motivation to

³ The Office Action actually states that it would have been obvious “to use Perlman’s apparatus and method to use a screen name and identification code to identify game player’s.” Office Action, page 3. It appears that the intent was to say that it would have been obvious *to substitute a telephone number for* the screen name and identification code in Perlman’s system.

display the telephone numbers, while at the same time providing motivation not to display the telephone numbers.

It can hardly be denied that Perlman discusses privacy concerns time and again. See, for example, the following statements made in Perlman:

1. “For reasons of privacy, many users would not want to publish their phone numbers.” Perlman, at col. 3, lines 42-43.

2. “Notably, this phone number is kept internally within computer 65. *It is not displayed* nor made accessible to User A. This is an important privacy consideration.” Perlman col. 12, lines 14-17 (emphasis added).

3. “Although the phone number of User B is transferred to the computer of User A during step 7, *the phone number of User B is not made available to User A.*” Perlman col 13, lines 29-31 (emphasis added).

Perlman’s privacy concerns are real and substantial. Perlman clearly did not want players’ telephone numbers to be displayed to other players. Indeed, Perlman does not stop at merely not displaying the telephone number of one player to another player. He actively prevents a player who receives the phone call from obtaining the telephone number of the player who placed the call by disabling Caller ID service prior to placing the call: “Further, if User A is in a calling area where Caller ID service is provided, the correct touch-tone sequence to disable the call identification will be generated by the client application software in User A's computer prior to initiating a call. This provides complete privacy to User A.” Perlman, at col. 13, lines 39-43. Perlman also introduces a scheme using call forwarding to prevent one player from learning the telephone number of another player. See Perlman, at col. 29, line 38 through col. 35, line 47.

Before a case of *prima facie* obviousness can be made, “the prior art must suggest the desirability of the claimed invention.” MPEP § 2143.01 (first heading, page 2100-129). In the present case, Perlman is devoid of any teaching of desirability of making the modification in issue. Moreover, not only Perlman fails to suggest the modification of his apparatus to include telephone number display, but he vigorously teaches away from such modification, practically requiring that the telephone numbers *not be displayed*, and underscoring the undesirability of displaying the numbers time and again. Teaching *undesirability* of the modification in the claimed invention is the polar opposite of teaching *desirability* of the claimed invention. A *prima facie* case of obviousness cannot be made under these circumstances.

Note also that functional equivalence is not the same as obviousness. “In order to rely on equivalence as a rationale supporting an obviousness rejection, the equivalency must be recognized in the prior art, and cannot be based on applicant’s disclosure or the mere fact that the components at issue are functional or mechanical equivalents.” MPEP § 2144.06 (citing *In re Ruff*, 256 F.2d 590, 118 U.S.P.Q. 340 (C.C.P.A. 1958)). It is well settled that the standard applicable to the determination of obviousness is whether the claimed matter would have been obvious to a person skilled in the art at the time of the invention. Existence of functional and mechanical equivalents simply does not force the conclusion that the subject matter as a whole would have been obvious. *E.g.*, *In re Flint*, 330 F.2d 363, 367-68, 141 U.S.P.Q. 299 (C.C.P.A. 1964).

A telephone number is not the same as a handle or another identifier. For example, multiple players can call from the same telephone number using different handles. Even more to the point, it may be easier to change a handle or identifier than to change a telephone number. For example, a game software package or a web server may allow a player to register under a new “identifier” at will. By comparison, the Board can take Official Notice of the inconvenience and expense typically

necessitated by changing one's telephone number. Thus, knowing a telephone number of the opposing player may provide some degree of confidence in the identity of the player. This may prevent obnoxious or otherwise uncouth behavior by some players, and help others avoid such players.

Similarly, displaying telephone numbers instead of arbitrary handles/identifiers may help prevent the practice of "sandbagging" in rated games. As is well known, a player's rating is supposed to provide an indication of the player's skill. Each win typically increases a player's rating, each loss lowers it. For whatever reason, highly-skilled players often prefer to display lower-than-deserved ratings; this may be done to lull other players into complacency, or to salve ego or save face in case of a loss. But because each win inflates the player's rating, ratings of skilled players eventually rise to the statistically appropriate level. An easy way to drop one's rating is to start from scratch – to obtain a new handle or identifier. Then, sandbagging new opponents can once again be done under a new identifier. Displaying the player's telephone number can curtail such activity because of the inconvenience and expense involved in obtaining a new telephone number. Therefore, displaying telephone numbers can provide functionality that may not be available when displaying arbitrary identifiers.

At least for the reasons discussed in the preceding paragraphs, independent claims 1, 10, 19, 28, and 37-40 are believed to be patentable over Perlman.

Claim 1

Claim 1 further recites a step of "determining, at said second communication terminal, the telephone number of said first communication terminal." The Office Action does not address this

limitation. It appears that Perlman does not teach this step. As discussed above, Perlman teaches how to *prevent* this step.

Claims 7, 16, 25, and 34

Dependent claims 7, 16, 25, and 34 recite the use of a speakerphone. While Perlman mentions outputting speech “into a room through a loudspeaker (such as the home television's speaker),”⁴ it does not teach the use of a *speakerphone*. A speakerphone is generally understood to be a telephony device for facilitating making and receiving telephone calls without the use of a headset or a handset. It includes both a loudspeaker and a microphone. See MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (Elec. Ed., Ver. 1.2, 1994-96) (“a combination microphone and loudspeaker device for two-way communication by telephone lines”). A speakerphone is more than a loudspeaker “such as the home television speaker.” At least for this reason, claims 7, 16, 25, and 34 are believed to be separately patentable over Perlman.

Claims 8, 17, 26, and 35

Dependent claim 8 recites dialing of a wireless telephone; dependent claim 17 recites receiving the telephone number of the first terminal at a wireless telephone; and dependent claims 26 and 35 recite apparatus wherein at least one of the terminals is a wireless telephone. The Office Action offered the following rationale for incorporating a wireless telephone in Perlman's apparatus: “[d]oing so enables a player the mobility to play the game remotely from traditional landlines.”

⁴ Perlman, col. 41, lines 27-30.

Office Action at 3. Perlman, however, emphasizes the ability to play “twitch” games, *i.e.*, “games that require split-second game control by players and cannot tolerate arbitrary communication latencies or delays. These games are by far the most popular category of video games.” Perlman, at col. 2, lines 5-8. According to Perlman, twitch games cannot be played through a dial-up network because of the time delays in such networks. Perlman, col. 2, lines 27-51. “As a result, remote multi-player twitch games can only be played through a direct telephone connection of one player to another player, barring a major overhaul . . . of the existing public access data networks.” Perlman, col. 2, lines 53-57. Given the well known additional time delay associated with cellular networks, Perlman therefore appears to teach away from the use of cell phones to play games. At least for this reason, claims 8, 17, 26, and 35 are believed to be separately patentable over Perlman.

B. Rejection of Claims 2-6, 11-15, 20-24, 29-33, 63-64 As Being Unpatentable Over Perlman, Teshima, and Golad

Claims 2 and 11

Dependent claims 2 and 11 expressly recite both (1) the display of the telephone numbers and (2) the use of identifiers and indicators of the players. These are separate limitations. To make a *prima facie* case of obviousness of these claims, it is not enough to point out the motivation to *substitute* display of telephone numbers for display of other identifiers. Instead, a motivation *to add* the telephone numbers to the display must be shown. The Office Action does not even attempt to do so. For at least this reason, dependent claims 2 and 11 are believed to be separately patentable over their respective base claims.

Claims 3, 12, 21, and 30

According to the methods and apparatus of dependent claims 3, 12, 21, and 30, the game move and identifier are displayed on one or more keys of a keypad used to dial telephone numbers. In rejecting the claims, the Office Action cites Golad (U.S. Patent No. 6,231,441) as teaching this limitation. Office Action at 6. We have reviewed Golad, but have not identified disclosure of keys used for dialing and display. Indeed, it appears that Golad does not disclose dialing or the use of telephone keypads for dialing telephone numbers. At least for this reason, dependent claims 3, 12, 21, and 30 are believed to be separately patentable over the combination of Perlman, Teshima, and Golad.

Claim 63

Independent method claim 63 is believed to be patentable for the reasons already elaborated in the discussion of independent claims 1, 10, 19, 28, and 37-40, which is set forth immediately following the ARGUMENT heading. To recapitulate briefly, Perlman fails to teach the desirability of modifying his apparatus and method to display telephone numbers. Because of privacy concerns, Perlman teaches away from such modification.

Claim 63 also recites the step of “determining, based on which player placed the first telephone call, whether the first player or the second player is authorized to send a first game move instruction.” It appears that this limitation is not taught by the references of record. This is an additional reason claim 63 is believed to be patentable over Perlman, Teshima, and Golad.

C. Rejection of Claims 60-62 and 65-67 As Being Unpatentable Over Wolinsky '427 Patent

Claims 60-62 and 65-67

Each of these claims recites a limitation whereby the telephone numbers of each terminal are displayed at each of the terminals at the same time (concurrently). This limitation is not found in the claims of Wolinsky '427 patent (U.S. Patent Number 6,682,427).

D. Rejection of Other Claims

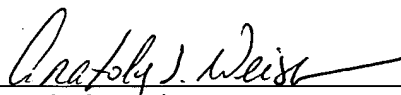
Dependent claims not specifically addressed in the above arguments are believed to be patentable at least for the reasons discussed in relation to their base and intervening claims.

VIII
CONCLUSION

For the foregoing reasons, Appellant respectfully submits that all pending claims are patentable over references of record and respectfully requests reversal of the rejections.

Respectfully submitted,

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Anatoly S. Weiser
Intellectual Property Legal Counsel
674 Via de la Valle, Suite 216
Solana Beach, CA 92075
(858) 720-9431
Reg. No. 43,229

APPENDIX – CLAIMS ON APPEAL

The following is a listing of the claims in the application. Claims 1-40 and 60-67 have been rejected and are involved in this Appeal.

1. (Previously Presented): A method of identifying game players and game moves, comprising:
 - in a first communication terminal having a first and a second memory location, storing a telephone number of said first communication terminal in said first memory location;
 - in a second communication terminal having a third memory location and a fourth memory location, storing a telephone number of said second communication terminal in said third memory location;
 - dialing at said first communication terminal, a telephone number of said second communication terminal;
 - storing said dialed telephone number in said second memory location;
 - establishing a communications link between said first and second terminals;
 - determining, at said second communication terminal, the telephone number of said first communication terminal;
 - storing said telephone number of said first communication terminal in said fourth memory location;
 - displaying at each of said terminals, said telephone number of said first terminal retrieved from said first and fourth memory locations; and
 - displaying at each of said terminals, said dialed telephone number retrieved from said second and third memory locations while said telephone number of said first terminal is being displayed.

2. (Previously Presented): The method of claim 1, further comprising:

activating at each of said terminals, a game mode to play a game between a first player associated with said first terminal and a second player associated with said second terminal;

defining a plurality of identifiers used to differentiate between said first and second players;

activating a first indicator representing said first player;

activating a second indicator representing said second player;

indicating at each of said terminals, which player is currently authorized to send a game move instruction;

receiving said instruction from said authorized player; and

displaying at each of said terminals, a game move and identifier associated with said received instruction.

3. (Original): The method of claim 2, wherein said game move and identifier are displayed on one or more keys of a keypad used to dial said dialed telephone number.

4. (Previously Presented): The method of claim 2, wherein the step of receiving said instruction from said authorized player comprises receiving from said authorized player at least one dual tone multi-frequency (DTMF) signal.

5. (Previously Presented): The method of claim 2, wherein the step of indicating at each of said terminals comprises sequentially activating and deactivating one of said first and second indicators at each of said terminals.

6. (Previously Presented): The method of claim 2, wherein the steps of activating the first and second indicators comprises activating color coded light emitting diodes (LEDs).
7. (Previously Presented): The method of claim 1, wherein the step of dialing at the first communication terminal comprises dialing a speakerphone.
8. (Previously Presented): The method of claim 1, wherein the step of dialing at the first communication terminal comprises dialing a wireless telephone.
9. (Previously Presented): The method of claim 1, wherein conversing parties associated with said terminals spontaneously set up and play a game without substantially interfering with an ongoing conversation over said communications link.
10. (Previously Presented): A method of identifying game players and game moves, comprising:
- in a first communication terminal having a first and a second memory location, storing a telephone number of said first communication terminal in said first memory location;
 - in a second communication terminal having a third memory location and a fourth memory location, storing a telephone number of said second communication terminal in said third memory location;
 - receiving at said second communication terminal, a telephone number of said first communication terminal;
 - storing said received telephone number in said fourth memory location;

establishing a communications link between said first and second terminals;
storing a telephone number of said second communication terminal in said second memory location;
activating at each of said terminals, a game mode to play a game between a first player associated with said first terminal and a second player associated with said second terminal;
displaying at each of said terminals, said received telephone number; and
displaying at each of said terminals, said telephone number of said second terminal while said received telephone number is being displayed.

11. (Original): The method of claim 10, further comprising:

defining a plurality of identifiers used to differentiate between said first and second players;
activating a first indicator representing said first player;
activating a second indicator representing said second player;
indicating at each of said terminals, which player is currently authorized to send a game move instruction;
receiving said instruction from said authorized player; and
displaying at each of said terminals, a game move and identifier associated with said received instruction.

12. (Original): The method of claim 11, wherein said game move and identifier are displayed on one or more keys of a keypad used to dial telephone numbers.

13. (Previously Presented): The method of claim 11, wherein the step of receiving said instruction from said authorized player comprises receiving from said authorized player at least one dual tone multi-frequency (DTMF) signal.

14. (Previously Presented): The method of claim 11, wherein the step of indicating at each of said terminals comprises sequentially activating and deactivating one of said first and second indicators at each of said terminals.

15. (Previously Presented): The method of claim 11, wherein the steps of activating the first and second indicators comprises activating color coded light emitting diodes (LEDs).

16. (Previously Presented): The method of claim 10, wherein the step of receiving at the second communication terminal, the telephone number of the first communication terminal comprises the step of receiving at a speakerphone, the telephone number of the first communication terminal.

17. (Previously Presented): The method of claim 10, wherein the step of receiving at the second communication terminal, the telephone number of the first communication terminal comprises the step of receiving at a wireless telephone, the telephone number of the first communication terminal.

18. (Previously Presented): The method of claim 10, wherein conversing parties associated with said terminals spontaneously set up and play a game without substantially interfering with an ongoing conversation over said communications link.

19. (Previously Presented): Apparatus for identifying game players and game moves, comprising:

a first communication terminal having a first and a second memory location, wherein said first memory location stores a telephone number of the first communication terminal;

a second communication terminal having a third and a fourth memory location, wherein said third memory location stores a telephone number of the second communication terminal;

means for dialing at a first communication terminal, a telephone number of a second communication terminal;

means for storing said dialed telephone number in said second memory location;

means for establishing a communications link between said first and second terminals;

means for storing said telephone number of said first communication terminal in said fourth memory location;

means for activating at each of said terminals, a game mode to play a game between a first player associated with said first terminal and a second player associated with said second terminal;

means for displaying at each of said terminals, said telephone number of said first terminal;
and

means for displaying at each of said terminals, said dialed telephone number while said telephone number of said first terminal is being displayed.

20. (Original): The apparatus of claim 19, further comprising:

means for defining a plurality of identifiers used to differentiate between said first and second players;

means for activating a first indicator representing said first player;

means for activating a second indicator representing said second player;

means for indicating at each of said terminals, which player is currently authorized to send a game move instruction;

means for receiving said instruction from said authorized player; and

means for displaying at each of said terminals, a game move and identifier associated with said received instruction.

21. (Original): The apparatus of claim 20, wherein said game move and identifier are displayed on one or more keys of a keypad used to dial said dialed telephone number.

22. (Original): The apparatus of claim 20, wherein said received instruction comprises at least one dual tone multi-frequency (DTMF) signal.

23. (Original): The apparatus of claim 20, wherein said authorized player is indicated by sequentially activating and deactivating one of said first and second indicators at each of said terminals.

24. (Original): The apparatus of claim 20, wherein said first and second indicators comprise color coded light emitting diodes (LEDs).

25. (Original): The apparatus of claim 19, wherein at least one of said terminals is a speakerphone.

26. (Original): The apparatus of claim 19, wherein at least one of said terminals is a wireless telephone.

27. (Previously Presented): The apparatus of claim 19, wherein conversing parties associated with said terminals spontaneously set up and play a game without substantially interfering with an ongoing conversation over said communications link.

28. (Previously Presented): Apparatus for identifying game players and game moves, comprising:

- a first communication terminal having a first and a second memory location, wherein said first memory location stores a telephone number of the first communication terminal;

- a second communication terminal having a third and a fourth memory location, wherein said third memory location stores a telephone number of the second communication terminal;

- means for receiving at a second communication terminal, a telephone number of said first communication terminal;

- means for storing said received telephone number in said fourth memory location;

- means for establishing a communications link between said first and second terminals;

- means for storing a telephone number of said second communication terminal in said second memory location;

- means for activating at each of said terminals, a game mode to play a game between a first player associated with said first terminal and a second player associated with said second terminal;

- means for displaying at each of said terminals, said received telephone number; and

- means for displaying at each of said terminals, said telephone number of said second terminal while said received telephone number is being displayed.

29. (Original): The apparatus of claim 28, further comprising:

means for defining a plurality of identifiers used to differentiate between said first and second players;

means for activating a first indicator representing said first player;

means for activating a second indicator representing said second player;

means for indicating at each of said terminals, which player is currently authorized to send a game move instruction;

means for receiving said instruction from said authorized player; and

means for displaying at each of said terminals, a game move and identifier associated with said received instruction.

30. (Original): The apparatus of claim 29, wherein said game move and identifier are displayed on one or more keys of a keypad used to dial telephone numbers.

31. (Original): The apparatus of claim 29, wherein said received instruction comprises at least one dual tone multi-frequency (DTMF) signal.

32. (Original): The apparatus of claim 29, wherein said authorized player is indicated by sequentially activating and deactivating one of said first and second indicators at each of said terminals.

33. (Original): The apparatus of claim 29, wherein said first and second indicators comprise color coded light emitting diodes (LEDs).

34. (Original): The apparatus of claim 28, wherein at least one of said terminals is a speakerphone.

35. (Original): The apparatus of claim 28, wherein at least one of said terminals is a wireless telephone.

36. (Previously Presented): The apparatus of claim 28, wherein conversing parties associated with said terminals spontaneously set up and play a game without substantially interfering with an ongoing conversation over said communications link.

37. (Previously Presented): A method of identifying game players and game moves, comprising:

in a first communication terminal having a first and a second memory location, storing a telephone number of said first communication terminal in said first memory location;

in a second communication terminal having a third memory location and a fourth memory location, storing a telephone number of said second communication terminal in said third memory location;

receiving at said second communication terminal, a telephone number of said first communication terminal;

storing said received telephone number in said fourth memory location;

storing a telephone number of said second communication terminal in said second memory location;

displaying at each of said terminals, said received telephone number; and

displaying at each of said terminals, said telephone number of said second terminal while said received telephone number is being displayed.

38. (Previously Presented): Apparatus for identifying game players and game moves, comprising:

a first communication terminal having a first and a second memory location, wherein said first memory location stores a telephone number of the first communication terminal;

a second communication terminal having a third and a fourth memory location, wherein said third memory location stores a telephone number of the second communication terminal;

means for receiving at said second communication terminal, a telephone number of said first communication terminal;

means for storing said received telephone number in said fourth memory location;

means for storing a telephone number of said second communication terminal in said second memory location;

means for displaying at each of said terminals, said received telephone number; and

means for displaying at each of said terminals, said telephone number of said second terminal while said received telephone number is being displayed.

39. (Previously Presented): A method of identifying game players and game moves, comprising:

in a first communication terminal having a first and a second memory location, storing a telephone number of said first communication terminal in said first memory location;

in a second communication terminal having a third memory location and a fourth memory location, storing a telephone number of said second communication terminal in said third memory location;

dialing at said first communication terminal, a telephone number of said second communication terminal;

storing said dialed telephone number in said second memory location;

storing a telephone number of said first communication terminal in said fourth memory location;

displaying at each of said terminals, said telephone number of said first terminal; and

displaying at each of said terminals, said dialed telephone number while said telephone number of said first terminal is being displayed.

40. (Previously Presented): Apparatus for identifying game players and game moves, comprising:

a first communication terminal having a first and a second memory location, wherein said first memory location stores a telephone number of the first communication terminal;

a second communication terminal having a third and a fourth memory location, wherein said third memory location stores a telephone number of the second communication terminal;

means for dialing at said first communication terminal, a telephone number of said second communication terminal;

means for storing said dialed telephone number in said second memory location;

means for storing a telephone number of said first communication terminal in said fourth memory location;

means for displaying at each of said terminals, said telephone number of said first terminal;

and

means for displaying at each of said terminals, said dialed telephone number while said telephone number of said first terminal is being displayed.

Claims 41-59 (Canceled).

60. (Previously Presented): A method of identifying game players and game moves, comprising:

in a first communication terminal having a first memory location and a second memory location, storing a telephone number of said first communication terminal in said first memory location;

in a second communication terminal having a third memory location and a fourth memory location, storing a telephone number of said second communication terminal in said third memory location;

storing the telephone number of said second communication terminal in said second memory location;

at said first communication terminal, dialing the telephone number of said second communication terminal to place a first telephone call to said second communication terminal;

receiving the first telephone call at said second communication terminal and establishing a communications link between said first and second terminals;

receiving caller ID signals associated with the first telephone call at said second communication terminal;

obtaining the telephone number of said first communication terminal from the caller ID signals received at said second communication terminal;

storing the telephone number of said first communication terminal obtained from the caller ID signals in said fourth memory location;

at said first communication terminal, retrieving said telephone number of said first communication terminal from said first memory location and displaying the telephone number of said first communication terminal retrieved from said first memory location;

at said first communication terminal, retrieving said telephone number of said second communication terminal from said second memory location and displaying the telephone number of said second communication terminal retrieved from said second memory location;

at said second communication terminal, retrieving said telephone number of said second communication terminal from said third memory location and displaying the telephone number of said second communication terminal retrieved from said third memory location;

at said second communication terminal, retrieving said telephone number of said first communication terminal from said fourth memory location and displaying the telephone number of said first communication terminal retrieved from said fourth memory location;

wherein said telephone numbers of said first and second communication terminals are displayed concurrently at said first and second communication terminals at least for a first period of time.

61. (Previously Presented): The method of claim 60, further comprising:

activating, at each of said terminals, a game mode to play a game between a first player associated with said first terminal and a second player associated with said second terminal;

defining a plurality of identifiers used to differentiate between said first and second players;

activating a first indicator representing said first player;

activating a second indicator representing said second player;

determining, based on which player placed the first telephone call, whether the first player or the second player is authorized to send a first game move instruction;

indicating at each of said terminals, which player is currently authorized to send a game move instruction;

receiving said instruction from the authorized player; and

displaying at each of said terminals, a game move and identifier associated with the received instruction.

62. (Previously Presented): The method of claim 61, further comprising enabling at least one of the first and second players to change which player is authorized to send the first game move instruction.

63. (Previously Presented): A method of identifying game players and game moves, comprising:

in a first communication terminal having a first memory location and a second memory location, storing a telephone number of said first communication terminal in said first memory location;

in a second communication terminal having a third memory location and a fourth memory location, storing a telephone number of said second communication terminal in said third memory location;

storing the telephone number of said second communication terminal in said second memory location;

at said first communication terminal, dialing the telephone number of said second communication terminal to place a first telephone call to said second communication terminal;

receiving the first telephone call at said second communication terminal and establishing a communications link between said first and second terminals;

storing the telephone number of said first communication terminal in said fourth memory location;

at said first communication terminal, retrieving said telephone number of said first communication terminal from said first memory location and displaying the telephone number of said first communication terminal retrieved from said first memory location;

at said first communication terminal, retrieving said telephone number of said second communication terminal from said second memory location and displaying the telephone number of said second communication terminal retrieved from said second memory location;

at said second communication terminal, retrieving said telephone number of said second communication terminal from said third memory location and displaying the telephone number of said second communication terminal retrieved from said third memory location;

at said second communication terminal, retrieving said telephone number of said first communication terminal from said fourth memory location and displaying the telephone number of said first communication terminal retrieved from said fourth memory location; and

determining, based on which player placed the first telephone call, whether the first player or the second player is authorized to send a first game move instruction;

wherein said telephone numbers of said first and second communication terminals are displayed concurrently at said first and second communication terminals at least for a first period of time.

64. (Previously Presented): The method of claim 63, further comprising enabling at least one of the first and second players to change which player is authorized to send the first game move instruction.

65. (Previously Presented): Apparatus for identifying game players and game moves, comprising:

- a first communication terminal comprising a first memory location, a second memory location, a dialer circuit, and a display, the first memory location being capable of storing a telephone number of the first communication terminal;

- a second communication terminal having a third memory location, a fourth memory location, a display, and a caller ID circuit, the third memory location being capable of storing a telephone number of the second communication terminal, and the fourth memory location being capable of storing the telephone number of the first communication terminal received from the caller ID circuit;

- wherein:

- the dialer is capable of dialing the telephone number of the second communication terminal to establish a communications link between said first and second terminals

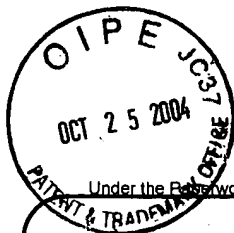
- the second memory location is capable of storing the telephone number of the second communication terminal;

- the first and second communication terminals are capable of entering a game mode to play a game between a first player associated with said first terminal and a second player associated with said second terminal;

the display of the first communication terminal displays the telephone numbers of the first and second communication terminals at the same time as the display of the second communication terminal displays the telephone numbers of the first and second communication terminals.

66. (Previously Presented): The apparatus of claim 65, wherein the first and second communication terminals determine, based on which player placed the first telephone call, whether the first player or the second player is authorized to send a first game move instruction.

67. (Previously Presented): The apparatus of claim 66, wherein at least one of the first and second communication terminals comprises an input capable of receiving a direction causing the apparatus to change which player is authorized to send the first game move instruction.



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